

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES
FIRST-CLASS PACKAGE SERVICE CONTRACT 78
(MC2017-172)
NEGOTIATED SERVICE AGREEMENT

Docket No. CP2017-273

**USPS NOTICE OF AMENDMENT TO
FIRST-CLASS PACKAGE SERVICE CONTRACT 78,
FILED UNDER SEAL
(April 27, 2018)**

The Postal Service hereby provides notice that the terms of First-Class Package Service Contract 78, in the above-captioned proceeding, have changed as contemplated by the contract's terms. A redacted version of the amendment to First-Class Package Service Contract 78 is provided in Attachment A, and the unredacted amendment is being filed under seal. The amendment will become effective two business days following the day that the Commission completes its review of this filing.

This amendment will not materially affect the cost coverage of First-Class Package Service Contract 78. Therefore, the supporting financial documentation and financial certification initially provided in this docket remain applicable. The Postal Service hereby incorporates by reference the Application for Non-Public Treatment originally filed in this docket, for the protection of the information that has been filed under seal.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorney:

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April 27, 2018

ATTACHMENT A

REDACTED AMENDMENT TO FIRST-CLASS PACKAGE SERVICE CONTRACT 78

AMENDMENT #1
OF
SHIPPING SERVICES CONTRACT
BETWEEN
THE UNITED STATES POSTAL SERVICE
AND
[REDACTED]
REGARDING
FIRST-CLASS PACKAGE SERVICE

WHEREAS, the United States Postal Service (the "Postal Service") and [REDACTED] ("Customer") entered into a Shipping Services Contract, First-Class Package Service Contract 78/Docket No. CP2017-273 regarding First-Class Package Service on July 31, 2017.

WHEREAS, the Parties desire to amend the terms in Sections I.C., I.E., I.G., and I.H. of the Contract, and to add Sections I.J. and I.K., including Appendix to Shipping Service Contract.

NOW, THEREFORE, the Parties agree that the contract is hereby amended as detailed below. The existing contract remains unchanged in all other respects. This amendment shall become effective two (2) business days following the day on which the Commission issues all necessary regulatory approval.

[Replace Sections I.C., I.E., I.G. and I.H. in their entirety, adding Table C, Sections I.J., I.K. and Appendix to Shipping Service Contract, as follows.]

I. Terms

- C. Customer will manifest Contract Packages as specified by the Postal Service, using a separate permit number and/or PC Postage account to ship such packages, and will use the Electronic Verification System ("eVS"), other USPS approved manifest systems, or USPS approved PC Postage vendors for payment of such packages. Customer shall provide the Postal Service, in writing, a list of its permit numbers and/or PC Postage accounts for approval. Contract pricing for any newly approved permits and/or PC Postage accounts will be effective within fifteen (15) business days after the Postal Service receives written notification from Customer. Only Contract Packages, and Customer's other First-Class Package Service – Commercial packages ("Total Packages"), shipped from authorized permits and/or PC Postage accounts shall count toward the volume commitments expressed in Sections I.E., I.G. and Table B.
- E. Volume Commitment. Customer should maintain a minimum quarterly average of [REDACTED] Total Packages shipped per Contract Quarter throughout the term of the Contract.

G. Customized pricing for this Contract will be based on a rolling four (4) quarter average.

1. The average will be based on the number of Total Packages shipped divided by the number of full Contract Quarters achieved. The quarterly average will be used to determine the applicable tier and the corresponding discounts off prevailing published First-Class Package Service – Commercial prices for the subsequent Contract Quarter.
2. At the conclusion of the first four (4) full Contract Quarters, tiered discounts for subsequent quarters will be calculated by the number of Total Packages shipped in the previous four (4) Contract Quarters divided by four (4).
3. At the conclusion of each Contract Quarter, the Postal Service will calculate the number of Total Packages and the number of applicable Contract Quarters to calculate and apply the appropriate rate table within fifteen (15) calendar days of the conclusion of that Contract Quarter.
4. If the quarterly average of Total Packages shipped falls below the minimum volume set for Tier 1 discounts, the Postal Service at its sole discretion has the right to revert Customer to the most current First-Class Package Service – Commercial prices for the subsequent Contract Quarter.
5. Table C below illustrates the method in determining tier level and corresponding discounts.

Table C

Contract Year (CY) 1	Tier Determination
Quarter 1	N/A
Quarter 2	N/A
Quarter 3	Tier 1 Discount
Quarter 4	Total Packages Shipped (CY1 Q's 2&3) ÷ 2
Contract Year (CY) 2	Tier Determination
Quarter 1	Total Packages Shipped (CY1 Q's 2,3&4) ÷ 3
Quarter 2	Total Packages Shipped (CY1 Q's 2,3&4 + CY2 Q1) ÷ 4
Quarter 3	Total Packages Shipped (CY1 Q's 3&4 + CY2 Q's 1&2) ÷ 4
Quarter 4	Total Packages Shipped (CY1 Q4 + CY2 Q's 1,2&3) ÷ 4
Contract Year (CY) 3	Tier Determination
Quarter 1	Total Packages Shipped (CY2 Q's 1,2,3&4) ÷ 4
Quarter 2	Total Packages Shipped (CY2 Q's 2,3&4 + CY3 Q1) ÷ 4
Quarter 3	Total Packages Shipped (CY2 Q's 3&4 + CY3 Q's 1&2) ÷ 4
Quarter 4	Total Packages Shipped (CY2 Q4 + CY3 Q's 1,2&3) ÷ 4

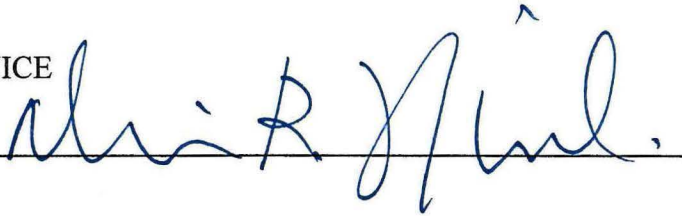
H. Price Adjustment. Throughout the term of this Contract and any extension period following the Contract term, Customer will pay the prevailing First-Class Package Service – Commercial prices, less the discounts shown in Tables 1 through 3 above, and rounded up to the nearest whole cent.

- J. Record Keeping and Audit. Customer shall respond to the Postal Service's or its designated auditor's quarterly and/or yearly transaction confirmations related to Postal Service transactions; and such other assistance as required by the Postal Service or its designated auditors in connection with Customer's performance under this Contract.
- K. Marketplace Requirements. The Parties (1) acknowledge and agree that the Appendix to Shipping Services Contract attached hereto is hereby incorporated into and made a part of this Contract by this reference; and (2) agree to comply with the terms set forth therein as if fully set forth herein.

IN WITNESS WHEREOF, the Parties hereto have caused this amendment to be duly executed as of the later date below:

UNITED STATES POSTAL SERVICE

Signed by: _____



Printed Name: Dennis Nicoski

Title: Senior Vice President, Sales and Customer Relations

Date: _____

4/23/18

Appendix to Shipping Services Contract

The terms set forth in this Appendix are attached to and incorporated by reference into the Shipping Services Contract (as it may be amended, restated, supplemented or otherwise modified from time to time, and together with all attachments thereto, the “SSC” or “Contract”), by and between the United States Postal Service (the “Postal Service” or “USPS”), an independent establishment of the executive branch of the Government of the United States, with its principal office at 475 L’Enfant Plaza, SW, Washington, DC 20260, and [REDACTED] a [REDACTED] corporation, with its principal office at [REDACTED] (“Customer”), regarding First-Class Package Service (“Product”). Capitalized terms used but not otherwise defined in this Appendix have the meaning set forth in the Contract.

I. Marketplace Requirements



In the event that the Customer is authorized to offer access to Product to one or more Third Parties under this Section I as part of the overall bundled logistics fulfillment services it provides to such Third Parties, for so long as Customer offers access to Product to any Third Party, Customer shall:

1. Ensure that each Third Party approved hereunder is bound by and expressly agrees to comply with all requirements that the Customer is subject to under the Contract, and expressly agrees that the Third Party’s access to Product may be terminated or suspended in accordance with the Contract terms. In addition, in the event that the Customer receives a written notice from the Postal Service indicating that any Third Party has breached any Contract term, the Customer shall terminate the Third Party’s access to the Product effective as of the termination date set forth in said notice (the “Termination Date”), unless the Third Party, as applicable, cures such breach to the Postal Service’s satisfaction prior to the Termination Date.
2. Upon request of the Postal Service (not more than four (4) times per Contract year), deliver complete and accurate transaction level data for all Third Party transactions within four (4) weeks of the date of the written request, which data shall be sufficient for the Postal Service to accurately compare postage amounts paid to the

Postal Service by Customer with postage amounts paid to Customer by each Third Party and shall be in an electronic file format as specified by the Postal Service.

3. Upon request of the Postal Service, deliver to the Postal Service the Shipper Information and Payment Information listed below, as well as such other information that may be reasonably requested (not more than four (4) times per Contract year, except in cases of suspected fraud, short-paid postage or breach of any Contract term), within four (4) weeks of the date of the written request. Notwithstanding the foregoing, in the event that the Postal Service suspects that a Third Party has short-paid postage, committed fraud or breached any Contract term, Customer shall furnish the Shipper Information and Payment Information listed below, as well as such other information that may be reasonably requested, to the Postal Service immediately upon receipt of a written request from the Postal Service. The Customer shall ensure that any and all Shipper Information, Payment Information and other information furnished to the Postal Service hereunder shall be complete and accurate in all respects and in an electronic file format as specified by the Postal Service. As used herein, "Shipper" shall mean the Third Party for whom the package is being entered into the mailstream.


Shipper Information:

- Unique Shipper ID
- Shipper Legal Name(s) and DBAs at the Account Level
- Shipper Name at the Site Level
- Shipper Address, City, State, ZIP Code
- Legal Address Sufficient for Delivering Service of Process
- Email Address
- Contact Phone Number
- Trusted Address Verification

Payment Information:

- Legal Name of Shipper
- Product Code/Description at the Mail Category Code Level
- Payment Type
- Payment Date and Time
- Payment Amount
- Reported Package Characteristics, including but not limited to mailing date, weight, dimensions, and origin and destination ZIP Codes

4. In the event that any Third Party short-pays postage, fully support the Postal Service's efforts to recoup unpaid amounts, which may include, without limitation, immediately suspending the Third Party's access to Product if requested by the Postal Service.

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6. Provide the below-listed privacy notice to all Third Parties when the Customer is collecting Third Party information on behalf of the Postal Service to administer financial transactions for purchasing postage and to meet postage system reporting requirements. A Privacy Act Statement meets privacy notice requirements when the Customer asks individual Postal Service customers to provide information about themselves and that information will be maintained in a Privacy Act System of Records by the Postal Service. In addition, when collecting Third Party information for its own purposes, the Customer shall disclose to all Third Parties that such information is subject to the Customer's privacy policy.

Privacy Act Statement: Your information will be used to facilitate the purchase of U.S. Postal Service (USPS) postage and fulfill transactional reporting requirements for USPS postage systems. Collection is authorized by 39 U.S.C. 401, 403, and 404. Providing the information is voluntary, but if not provided, your transaction may not be processed. USPS does not disclose your information to third parties without your consent, except to facilitate the transaction, to act on your behalf or request, or as legally required. This includes the following limited circumstances: to a congressional office on your behalf; to financial entities regarding financial transaction issues; to a USPS auditor; to entities, including law enforcement, as required by law or in legal proceedings; and to contractors and other entities aiding us to fulfill the service (service providers). For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

7. Deliver to the Postal Service, upon request, such other items and perform such other actions, as the Postal Service may reasonably determine are necessary in order to permit Customer to continue to offer Product to Third Parties, such as executing a trademark license.

II. Termination and Remedies





III. Representations, Warranties and Covenants

Customer hereby represents, warrants and covenants to the Postal Service as follows:

- A. The execution and delivery by Customer of the Contract and the performance by the Customer of its obligations under the Contract (1) are within the Customer's power and authority; (2) have been duly authorized; and (3) do not and will not contravene (i) any law or regulation binding on or affecting Customer, (ii) any contractual restriction binding on Customer, (iii) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Customer, or (iv) the organizational documents of Customer; and
- B. The individual signing the Contract on behalf of Customer is a duly authorized officer of the Customer with the power and authority to enter into the Contract on behalf of Customer; and
- C. The Customer shall comply with all applicable federal, state and local laws, rules and regulations.

IV. Confidentiality; Public Disclosures

In addition to the confidentiality obligations set forth in the Contract, Customer hereby agrees to treat as confidential, and not disclose to third parties absent express written consent by the Postal Service, the Shipper Information, Payment Information, the prices offered to Third Parties, and the terms of this Appendix.

Customer hereby acknowledges and agrees that the form, substance, and timing of any press release or other public disclosure of matters related to the Contract or the relationship between Customer and the Postal Service prepared and/or to be disclosed by Customer shall be subject to the prior review and written approval of the Postal Service. The Postal Service shall endeavor to respond to the Customer with written comments or written approval within five (5) business days of receipt of the proposed disclosure, but failure to approve in writing within that time frame shall be deemed disapproval. This Section does not prohibit either Party from disclosing information that is required to be disclosed by law or that is requested by any federal, state, or local governmental body in the proper exercise of its oversight or investigatory jurisdiction.

V. Sovereign Acts

The Postal Service and Customer acknowledge and agree that the Contract is subject to any legislation that might be enacted by the Congress of the United States or any orders or regulations that might be promulgated by any agency, branch, or independent establishment of the United States Government. Notwithstanding anything to the contrary

set forth herein, the Postal Service and Customer further acknowledge and agree that the Contract in no way waives the Postal Service's authority to act in its sovereign capacity and to promulgate and amend from time to time regulations and policies and that, pursuant to the sovereign acts doctrine, the Postal Service shall not be held liable for any acts performed in its sovereign capacity, or for any acts performed by any branch, agency or independent establishment of the United States in their sovereign capacities that may directly or indirectly affect the terms of the Contract. In the event that either Party is required by legislation enacted by the Congress of the United States or any orders or regulations that might be promulgated by any branch, agency, regulatory body, or independent establishment of the United States Government to terminate, or otherwise as a result of such action is unable to perform its obligations under the Contract, either Party may give the other Party a notice of termination of the Contract, which termination shall be effective immediately or on the effective date of such requirement, whichever is later. The Parties agree that in the event that the Contract is terminated as set forth in the preceding two sentences, or in the event that either Party is enjoined from proceeding with the Contract by any court of competent jurisdiction, such Party shall not be subject to any liability by reason of such termination or injunction. To the extent that any applicable law, regulation or policy adopted after the Effective Date expressly supersedes the terms of this Appendix, such law, regulation or policy shall control.

VI. Notices

Any notice or other communication to be provided to a Party hereunder shall be in writing and shall be sent via certified mail (with return receipt requested) or by email to the individual and at the address listed below unless otherwise specified by the Party in writing. Notices shall be deemed given when received by the Party.

If to the Postal Service, to:

[REDACTED]

If to the Customer, to:

[REDACTED]

VII. Governing Law

THE CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH PRINCIPLES OF FEDERAL LAW.

VIII. Counterparts

The Contract may be executed in any number of counterparts, all of which taken together shall constitute one (1) single agreement between the Parties. A facsimile or other electronically or digitally transmitted copy of a signature on any counterpart shall be deemed to be an original signature. The Contract constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties.